

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of:

Greencastle Lakes Community Association
One Bank Street
Suit 250
Gaithersburg, MD 20878

Complainant

v.

Dawit Abeje
3812 Water Drop Court
Burtonsville, MD 20866

Respondent

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Case No. 776-G
June 26, 2006

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearings on April 3, 2006, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12 and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:¹

The Dispute

The respondent, Dawit Abeje, is the owner of a townhouse in Greencastle Lakes and, as such, is a member of the Greencastle Lakes Community Association (hereinafter the Association). The Association utilizes the services of a managing agent, The Management Group Associates, Inc. to oversee its properties. On November 6, 2003, the Association, through its managing agent, sent the respondent a notice of violation of the Association's Architectural Guidelines that were in need of correction. Specifically, Mr. Abeje was advised to: "Conceal exposed cable/wire at rear of home. Clean siding on right side of property. Submit an Architectural Change Request for the spotlights installed on . . . side bay window."

¹ Panel members present at the hearing were Mr. John Sample, Panel Chair, and Commissioner Andrew Oxendine. Commissioner Mr. Eric Smith was not present for the hearing but has submitted into the record a Certificate verifying that he has read the transcript and reviewed the record in its entirety.

Follow-up correspondence was sent to Mr. Abeje on February 25, 2004, stating that the repair/maintenance issue was unresolved. It was further noted that the management group had not received a signed response to its first letter. According to an internal memorandum submitted into evidence by the Association, Mr. Abeje responded to this second letter with a request for extension of time to correct the situation. According to the memorandum, the request for an extension was reviewed with the Board of Directors and an extension to April 30, 2004 was granted for Mr. Abeje to correct the alleged violations.

On July 8, 2004, a “Final Request” was mailed to Mr. Abeje by registered mail. In addition to the previously cited violations, the letter cited Mr. Abeje for “storm door and front door colors [that] do not appear to match the approved color palette for [the] home. This letter was signed for and accepted by Tigist Bayih, who, in signing for the registered letter, identified himself as an agent for Mr. Abeje. Finally, on August 30, 2004, an “Enforcement Notice” was sent to Mr. Abeje.

Procedural History

On June 14, 2005, the Commission on Common Ownership Communities accepted a complaint filed by the Greencastle Lakes Community Association. In its complaint, the Association sets forth the alleged violation as follows:

“Storm door and front door colors do not match the approved color palette for the home. Exposed cable/wire at rear of home. Siding on on [sic] right side of property needs to be cleaned. No approval on file for spotlights installed on side bay window.”

The complaint also set forth what actions by the respondent would serve to resolve the dispute:

“Repaint storm door and front door the approved colors. Conceal exposed cable/wire. Clean siding on right side of home. Submit an Architectural Change Request form for the spotlights or remove them completely. If the application is denied, the homeowner would be requested to remove them.”²

Notice of the complaint, along with a copy of the complaint, was sent by the Montgomery County Department of Housing and Community Affairs to the address provided for Mr. Abeje. Included in the body of the letter was a recommendation that both parties consider mediation of their dispute. The letter also requested a response from Mr. Abeje within 30 days. A response not having been received, a second, certified, letter was sent to the respondent, return receipt requested. The second letter was received and signed for on July 29, 2005, the recipient of the letter identifying himself as the addressee.

² The Association’s Architectural Guidelines were subsequently amended by the Board of Directors resulting in the spotlights no longer being in violation. Accordingly, during the hearing on this complaint it was requested by the Association that this element of its complaint be withdrawn

No reply was received to the complaint. The matter was subsequently referred to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(f) with a recommendation that the Commission accept jurisdiction. The Commission accepted jurisdiction at its September 7, 2005, meeting and a hearing scheduled for January 25, 2006. Mr. Abeje was sent written notice of the Commission's acceptance of jurisdiction, advising the respondent of the hearing's scheduled date and location, was sent by certified mail on December 16, 2005.

The Association subsequently requested a continuance of the scheduled January 25, 2006, hearing "due to changes in the make up of the Board of Directors." The request for a continuance was granted and the hearing rescheduled for April 3, 2006.

ARCHITECTURAL GUIDELINES VIOLATIONS

The case was heard by this Hearing Panel on April 3, 2006. The Greencastle Lakes Community Association was represented by counsel. Also present was Mr. Thomas van Pelt, the Greencastle Lakes management agent, who testified on the Association's behalf. Also present were two members of the Board of Directors who did not provide testimony. The Respondent Mr. Dawit Abeje did not attend the hearing; neither did the Respondent send legal counsel or other representation.

Mr. van Pelt provided photographic evidence of the alleged violations and testified that the conditions were still in existence as of 2:30 p.m. on the day of the hearing. Mr. van Pelt also provided thirteen pages of supplementary documentation, including the Association's attempts to contact the respondents concerning the alleged maintenance violations. The supplementary documentation was accepted into evidence in total as Complainant's Exhibits 2 through 5.

During his testimony, Mr. van Pelt described the dirt and mold visible on the side of Respondent's townhouse in Complainant's Exhibits 2 and 5 as typical of a townhouse unit in Greencastle Lakes. Mr. van Pelt further testified that the condition is typically controlled by either washing the siding by hand or with a hose, but that more serious conditions may require pressure washing, particularly if the condition is neglected.

Mr. van Pelt also testified that the wire/cable exposed on the exterior of the property (Complainant's exhibits 4(a) and 4(b)) exceeds 25 inches in length.

Finally, Mr. van Pelt testified that Greencastle Lakes is divided into sections, and each section is required to paint its property in compliance with the colors set forth on a color chart provided to each homeowner. According to Mr. van Pelt, the color of the front door of the property was not in compliance with the color chart for the section in which the Respondent's home is located. The witness also noted that the two-tone appearance of the door possibly indicated an effort by the Respondent to match the door to the color chart.

Findings of Fact

1. Mr. Dawit Abeje is the owner of the property at 3812 Water Drop Court, Burtonsville, MD 20866. This property is located within Greencastle Lakes.
2. All homeowners within Greencastle Lakes are, by virtue of their homeownership, members of the Greencastle Lakes Community Association. As such, the property is subject to the Declaration of Covenants, Bylaws and Articles of Incorporation dated October 15, 1984, recorded by Liber 2675, Folio 1737 among the Land Records for Montgomery County, Maryland, supplements thereto and rules, policies and procedures adopted pursuant to the authority in the Declaration.
3. On November 6, 2003, the Association, through its management agent, advised the Respondent that his home was not in compliance the Associations Architectural Guidelines. The violation was expanded upon by the Association in correspondence addressed to the Respondent on July 8, 2004. In reviewing the testimony and evidence provided by the Association, the Panel finds as follows:
 - a. The mold, dirt and general failure to maintain the appearance of the property as evidence by Complainant's Exhibits 2 and 5 constitute a violation of Article III, Section 115.1 of the Association's Architectural Guidelines;
 - b. The photographs entered into evidence as Complainant's Exhibits 4(a) and 4(b) support the testimony of Mr. van Pelt that the exposed cable/wire observed in photographs exceed the 24 inches of total cable/wire that may be exposed on the exterior of any home, and thus is in violation of Article III, Section 10.1.4 of the Architectural Guidelines; and
 - c. The front doors pictured in Complainant's Exhibit 3 indicates that two different tones of paint have been applied, supporting that uncontested testimony of Mr. van Pelt that the color of the door is not in compliance with the palette of colors approved for Respondent's property by Section 85 and supporting color chart of the Architectural Guidelines.

REQUEST FOR ATTORNEY FEES

At the conclusion of the April 3, 2006, hearing, the Complainant requested that the Respondent be ordered to compensate the Complainant for the legal fees incurred prosecuting this complaint, as well as the \$50 filing fee imposed with the filing of this complaint. The record was thereupon kept open an additional ten (10) days to allow the Association to submit documentation supporting this request. Following the April 3,

2006, hearing, the Commission received from counsel documentation in support of her legal fees.

Findings of Fact

1. The Architectural Guidelines specifically provides in Section V, Article 4 that “[a]ny costs for [Greencastle Lakes Community Association] legal action during pursuit of its right to remove or correct violations shall be charged to the affected homeowner following resolution of the action. *Commission Ex. 1, p. 82.*

2. On March 10, 2006, counsel billed 0.10 hours for consultation. On April 3, 2006, counsel billed 2.50 hours for the hearing. This totaled 2.60 hours at an hourly rate of \$295.00 an hour. Counsel’s total fee request comes to \$767.00. (The Panel notes that at the hearing, counsel advised the Panel that she spent one hour in preparation for the hearing which, when added to the 90 minutes the hearing lasted, would total the 2.50 hours requested in counsel’s supplementary submission.)

3. Initial notice non-compliance was sent to Respondent in November 2003. After Mr. Abeje responded to a second notice, Respondent was granted an extension to April 30, 2004, to correct the violations. When Respondent failed to meet this deadline, the Association waited until July 8, 2004, to send a “Final Request.” This was followed by an August 2004 “Enforcement Notice.” It was not until June 2005 that the Association followed up on its Enforcement Notice by filing this Action with the Commission.

Discussion

The Association’s operating documents provide that individual members shall be responsible for any legal fees incurred in the enforcement of Community regulations. Furthermore, under Section 10B-13(d) of the Montgomery County Code attorney fees may be awarded against the losing party if the panel finds that the party has maintained a frivolous dispute, unreasonably failed to participate in mediation, or substantially delayed the dispute resolution process. The Panel agrees that the Respondent should be compelled to bear the financial burden incurred in the pursuit of this action. The Respondent never answered the complaint, did not respond to the Commission’s offer of mediation, did not appear at the hearing, and never offered any justification for his refusal to comply with the rules and the Complainant’s attempts to enforce those rules. The Panel therefore holds that Article V, Section 4 of the Architectural Guidelines should be enforced.

The time billed by counsel for case preparation and attendance is found on its face to be reasonable. The hourly billing rate of \$295.00 an hour requested by counsel is also found to be reasonable. The Panel further notes that by the Respondent’s failure to participate in this hearing, there is no evidence in the record by which the Panel may either challenge or adjust these figures.

ORDER

For the reasons set forth above, the Panel finds the respondent to be in violation of his obligation to the other members of the Association to maintain his property in accordance to the provisions of the Architectural Guidelines. Accordingly, it is this 26th day of June, 2006, ORDERED:

1. The Respondent must, within 45 days of the date of this Order:
 - a. Remove the dirt and mold the visible on the townhouse's siding, using any appropriate means necessary to accomplish the task;
 - b. Either remove the cable/wire that is presently visible on the exterior of the townhouse or, in the alternative, to hide any length of the offending cable/wire in excess of 24 inches by hiding it behind siding or downspouts or by painting or camouflaging it so as not to be seen at all, pursuant to Architectural Guidelines Section 010.1.4;
 - c. Paint the front door of the property in a color selected from the approved color chart adopted by the Complainant;
 - d. Reimburse to the Complainant the \$50.00 (fifty dollars) filing fee paid by the Complainant to pursue this action; and
 - e. Reimburse the Complainant the sum of \$767.00 as compensation for legal fees incurred by Complainant in connection with this dispute.

Panel Members Andrew Oxendine and Eric Smith concur in the foregoing.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within (30) days of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

John Sample Panel Chair
Commission on Common Ownership Communities